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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. LEXINGTON NATIONAL INSURANCE CORPORATION, Defendant and Appellant.	B213268 (Los Angeles County Super. Ct. No. OSJ-1024)

APPEAL from a judgment of the Superior Court of Los Angeles County. Richard S. Kemalyan, Judge. Affirmed.

Nunez & Bernstein and E. Alan Nunez, for Defendant and Appellant.

Ralph L. Rosato, Assistant County Counsel, Gary P. Gross, Deputy County Counsel, and Liliana Campos, Associate County Counsel, for Plaintiff and Respondent.

Lexington National Insurance Company appeals from the order denying its motion to vacate the summary judgment for bail forfeiture that was entered when Juan Jose Chavez failed to appear in court as required. We affirm because the forfeiture exoneration provisions do not apply on these facts, and because Lexington failed to follow the proper procedures once it learned Chavez was in custody on other charges.

FACTS AND PROCEDURAL HISTORY

On June 17, 2007, Juan Jose Chavez was arrested for drug possession, and then released on $25,000 bail. The bail bond was posted by Lexington National Insurance Corporation through its agent, Nora's Angelz Bail Bonds. Chavez was ordered to appear for arraignment at the West Covina branch courthouse of the Los Angeles County Superior Court on August 17, 2007. The case number for that charge was KA079897. On August 2, 2007, while out on bail, Chavez was arrested by El Monte police for drug possession, grand theft auto, burglary, and evading a pursuing peace officer. He was held in custody and ordered to appear in the El Monte courthouse of the Los Angeles Superior Court on August 17, 2007. The case number for the burglary charge was KA 080176. The case number for the three other charges was KA080039.[1] Chavez appeared in the El Monte courthouse on the El Monte cases on August 17, 21, and 28, 2007, and, on the latter date, was convicted in those cases.[2] He was committed to the state prison in Lancaster to serve a 16-month sentence, and was released from the county jail to the state prison on September 12, 2007.

When Chavez failed to appear in the West Covina courthouse on August 17 in the West Covina case – he was in the County jail on the El Monte case at the time – the West

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[1] We will refer to these two cases collectively as the El Monte cases, and to the West Covina drug charge as the West Covina case. Chavez was also charged in West Covina with driving on a suspended license, and Lexington posted a $10,000 bail bond for that charge. However, the suspended license bond has not been raised as an issue.

[2] The record does not say so, but we assume Chavez pleaded either guilty or no contest in the El Monte cases.

Covina court issued a bench warrant for his arrest and declared the bond forfeited. Notice of the forfeiture was mailed to Lexington and Nora's Angelz on August 20, 2007. On April 11, 2008, the court clerk filed an application for entry of summary judgment against Lexington on the bond. The judgment was entered that day. On April 21, 2008, while still serving his state prison sentence in the El Monte case, Chavez appeared in the West Covina court, and his bench warrant was recalled. On May 2, 2008, Chavez appeared in the West Covina court and rejected a plea bargain of eight months to run consecutive to the state prison sentence he was currently serving. On May 15, 2008, Chavez appeared in the West Covina court, pleaded no contest in the West Covina case, and was sentenced to 16 months in state prison.

Los Angeles County opposed the motion on three grounds: (1) Mora's declaration said nothing other than that she learned Chavez was in jail on September 12, 2007, and that fact alone was insufficient to support the motion; (2) section 1305, subdivision (c)(3) did not apply because Chavez was in state prison on separate, unrelated charges, not in the underlying case; (3) the section did not apply because Chavez was arrested within the county, not outside the county; and (4) the motion was untimely because it was brought well after the time period to do so had expired.

Lexington then filed supplemental briefing and another declaration from Mora. Her new declaration said that after receiving the notice of forfeiture on August 27, 2007, she tried to contact Chavez's fiancée in order to learn where he was. The fiancée did not respond until September 20, 2007, and told Mora that Chavez was in prison for a parole violation. On September 26, 2007, Mora learned Chavez "was arrested" on September 12, 2007 and was in the Lancaster state prison. She then "mailed a letter stating these facts . . . to the West Covina Courthouse on October 1, 2007." A copy of the letter was attached to her declaration. After several weeks without a response, Mora called the "bond clerk," who told Mora she had to call the state prison and ask that a hold be placed on Chavez. Mora asked the bond clerk to "send a copy of the hold." According to Mora, the bond clerk said "they" could not do that, but would contact the court directly.

Mora's declaration claimed that after "checking the forfeiture statuses for several weeks we then contacted the bond clerk on January 27, 2008. The clerk asked for the CDC number and a copy of the original letter that we mailed out to be faxed over to her, so we did so. The bond clerk said that she would forward it to the judge. We then contacted Lancaster State Prison once again. They sated [*sic*] that they would send the defendant to court before he finished his sentence. After several attempts to resolve this matter and trusting that the State Prison and clerk of the court would follow through. [*Sic.*] At this time we had no other choice but to turn this case over [*sic*] our attorneys, as time was running out on this bond."

The letter that Mora claims she sent to the West Covina courthouse states that she was requesting exoneration of the bond because she "made numerous attempts to locate the defendant since the bond was forfeited . . . and I have recently found out he has been in state prison since 09/12/07 and is currently in Lancaster State Prison." The letter provides Chavez's inmate number and the prison's phone number. However, the letter is undated and although it says it is for the attention of the "Superior Court of California County of Los Angeles," does not include the address where it was supposedly mailed. At the bottom of the copy, however, is a fax machine date stamp of March 21, 2008. However, the date stamp reflects only the fax number of Nora's Angelz and does not show where the fax was sent.

According to Lexington's supplemental points and authorities, once Mora told the West Covina court on September 20, 2007, that Chavez was in state prison, she effectively surrendered Chavez to the court's custody. Chavez's imprisonment within the county therefore satisfied the purpose of the bond, requiring an exoneration of the forfeiture. Included with the supplemental brief were various arrests, booking, and prison records from the El Monte and West Covina cases.

The trial court denied the motion. There is no reporter's transcript from the hearing, and the only record of the court's ruling is a minute order stating without elaboration of reasons that the motion was denied.

DISCUSSION

1. *Applicable Legal Principles*

The purpose of bail, and its forfeiture, is to make sure a defendant appears in court and otherwise obeys court orders. (*County of Los Angeles v. Fairmont Specialty Group* (2009) 173 Cal.App.4th 146, 151 (*Fairmont Specialty Group*).) A bail bond is a contract between the court and a surety whereby the surety promises that a defendant released from custody will appear in court when ordered. If not, the surety becomes a debtor for the bond amount. (*Ibid.*) Bail is forfeited if a defendant fails to appear as ordered before judgment is pronounced. (§ 1305, subd. (a).) Once a defendant fails to appear as ordered, a forfeiture of his bail bond may be declared, and a notice of forfeiture must be mailed to the surety. (§ 1305, subd. (b).)

A bail forfeiture may be exonerated under three circumstances: (1) if the defendant appears in court, voluntarily or in custody, within 180 days from the date a notice of forfeiture was mailed (§ 1305, subd. (c)(1)); (2) if "within the county where the case is located, the defendant is surrendered to custody by the bail or is arrested in the underlying case within the 180-day period, and is subsequently released from custody prior to an appearance in court" (§ 1305, subd. (c)(2)); and (3) if "outside the county where the case is located, the defendant is surrendered to custody by the bail or is arrested in the underlying case within the 180-day period." The bail forfeiture statutes must be strictly construed in favor of the surety to avoid the harsh results of a forfeiture. (*County of Orange v. Lexington Nat. Ins. Corp.* (2006) 140 Cal.App.4th 1488, 1492.)

We review the trial court's order under the abuse of discretion standard, and will not reverse unless such abuse appears in the record. (*Fairmont Specialty Group, supra,* 173 Cal.App.4th at p. 151.)

2. *The Bond Forfeiture Exoneration Provisions Did Not Apply*

Section 1305, subdivision (h) provides that a "hold placed on the defendant in the underlying case while he or she is in custody on other charges" has the same effect as the

defendant's arrest. On appeal, Lexington contends that section 1305, subdivision (c)(2) and (3) required either state prison officials or the West Covina court to place a hold on Chavez once he was in custody, particularly after Mora informed the West Covina court's bond clerk that Chavez was in Lancaster state prison and asked both the clerk and the prison to initiate the hold. As a result, according to Lexington, the trial court was required to vacate the bond forfeiture.

Interpretation of the relevant statutes is a question of law subject to independent review, and we will apply the plain language of the statutes. (*People v. Lexington National Ins. Co.* (2007) 158 Cal.App.4th 370, 374 & fn. 4.) Section 1305 should be construed in a reasonable, commonsense manner in line with its apparent purpose in order to advance wise legislative policy and avoid absurd results. (*Fairmont Specialty Group, supra,* 173 Cal.App.4th at p. 153.) However, our primary task is to determine the Legislature's intent. The words chosen are the best indicator of that intent, and if the language is clear and unambiguous, we do not need to construe it. (*People v. Accredited Surety & Casualty Co.* (2004) 132 Cal.App.4th 1134, 1143.)

Although section 1305, subdivision (h) equates a "hold" with an arrest, section 1305 is silent as to how such a hold is initiated or effected, or whether the court or state prison officials have a duty to do so after learning from a surety that a defendant who skipped bail in one case is now in custody in another case. Relying on *People v. Lexington National Ins. Corp.* (2010) 181 Cal.App.4th 1485 (*Lexington I*), Lexington contends that Mora's informal written and verbal requests for a hold on Chavez obligated the West Covina court and prison officials to place that hold. We read *Lexington I* differently, and believe it is both inapplicable and suggests the opposite is true.

In *Lexington I,* Lexington posted a bond for a prisoner who fled and was later arrested in Virginia for a crime committed in that state. After the bond was declared forfeited, Lexington, acting without counsel, moved to vacate the forfeiture under section 1305, subdivision (c)(1), which did not apply because the defendant had not appeared in the California court within the 180-day period either voluntarily or while in custody. At the hearing, Lexington showed proof the prisoner was in custody in Virginia. The

prosecutor argued, and the trial court agreed, that Lexington had the duty to produce the prisoner in California. Lexington then asked the court to toll the 180-day period, but the court denied the request because it was informal, and was not made as part of a properly noticed motion. The Court of Appeal reversed.

Unlike a case where a prisoner released on bond in one California case was held elsewhere in the state on another case, the prisoner was outside the jurisdiction of this state. Under section 1305, subdivision (f), when a defendant is held in another state, and the prosecutor elects not to seek extradition, the court shall vacate the forfeiture and exonerate the bond. Similarly, under subdivision (g), when a defendant is outside California and is not in custody in another state but is temporarily detained in the other state by the bail agent, the bond forfeiture will be vacated if the prosecutor chooses not to extradite the defendant. As a result, the prosecutor, not the bondsman, had the responsibility to bring the defendant back to California. (*Lexington I, supra*, 181 Cal.App.4th at p. 1491.)

The Court of Appeal acknowledged that Lexington's motion to vacate the bond forfeiture incorrectly relied on section 1305, subdivision (c)(1), because that subdivision applies only when the defendant appears in court on the case in which forfeiture was entered and appears either voluntarily or while in custody after surrender or arrest within the 180-day period. Instead, the motion should have cited subdivision (e)(1), which required the court to toll the 180-day period upon a showing that the defendant was subject to a temporary disability because he was detained by the civil authorities. Even so, Lexington's request at the end of the hearing to toll the 180-day period should have been considered and acted on by the trial court under subdivision (e)(1) because it was clear that the factual basis of the motion was the defendant's detention in a Virginia prison. (*Lexington I, supra*, 181 Cal.App.4th at pp. 1492-1493.) The trial court should have determined what relief was appropriate based on the law and undisputed facts, and the 180-day period should have been tolled. *"Tolling would have allowed the opportunity for a hold to be placed with the Virginia authorities,* which presumably then

would have resulted in the defendant's return to the jurisdiction of the California courts and in the exoneration of the bail bond." (*Ibid*, italics added.)

We take from *Lexington I* two important notions. First, it is inapplicable here because Chavez was not in custody in another state, which would have required the prosecutor to seek his extradition. Second, the italicized language quoted above suggests that only after a bondsman's motion for tolling is granted may a hold be placed on a defendant.[3]

Ultimately, it does not matter whether the state should have placed a hold on Chavez, or whether a surety could request such a hold informally through a letter or a phone call to the court clerk. Assuming for argument's sake that a surety could request such a hold informally through a letter or phone call, the only evidence of such a request came from Mora's second declaration, which the trial court was free to disregard. (*Tammen v. San Diego County* (1967) 66 Cal.2d 468, 477; *People v. Surety Ins. Co.* (1978) 77 Cal.App.3d 533, 536.) For instance, the trial court might have rejected the declaration because: (1) Mora's first declaration was silent on these points, which she made only after the County pointed out the defects in the first declaration; (2) Mora's second declaration did not identify by name the court clerk or prison officials to whom she supposedly spoke; (3) her letter to the West Covina court that she supposedly mailed to the court on October 1, 2007, then faxed to the clerk again in January 2008, was not addressed or dated, but bore a fax date stamp of March 21, 2008, that did not show where the fax was sent; and (4) Mora was an interested party. (*Tammen v. San Diego County, supra,* at p. 477.) Because Lexington did not prepare a reporter's transcript as part of the appellate record, we must assume the record would demonstrate the absence of error, and will affirm on that basis. (*People v. Seneca Ins. Co.* (2004) 116 Cal.App.4th 75, 80-81.) As a result, we presume the trial court did not believe Mora's version of events, and therefore affirm its order on the ground that there was no evidence a hold was ever requested.

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[3] We discuss the latter proposition below as part of an alternative basis for our affirmance.

Assuming for the sake of argument that a hold existed, or that the court or prison officials were obligated to impose a hold because one had been informally requested, Lexington still did not satisfy subdivision (c)(2) and (3) of section 1305.

Under section 1305, subdivision (c)(2), the court shall, on its own motion, vacate a forfeiture when a defendant is held on the underlying case within the 180-day period *and* is "subsequently released from custody prior to an appearance in court . . . ." Assuming that a hold was in effect after Mora notified the court and the prison in September 2007, Chavez was never released from custody before appearing in court after that time. Therefore, that subdivision does not apply.

Section 1305, subdivision (c)(3) applies when a defendant is arrested or held in the underlying case *outside the county*. We take judicial notice of the fact that El Monte, West Covina, and Lancaster are all within the County of Los Angeles. Because Chavez was at all times held within the county, that subdivision does not apply.

Furthermore, both provisions require that the defendant be held in the underlying case, which, as to Chavez, meant the West Covina case. Lexington contends that, under *Fairmont Specialty Group*, *supra*, 173 Cal.App.4th 146, we must deem that Chavez was in fact being held in the underlying case. The defendant in that case was arrested for shoplifting by the Culver City police. While the defendant was in custody, the arresting officer learned there was a bench warrant for the defendant because she had skipped bail on a case arising in Inglewood. The Inglewood police told the arresting officer to release the defendant on the bench warrant due to concerns about her medical condition. Based on this, there was "no doubt [the defendant] would not have been released until the Culver City Police Department ascertained the status of the outstanding warrant. Thus, from the time [the arresting officer] learned of the warrant to the time she was notified to ignore it, [the defendant] was subject to a 'hold . . . in the underlying case' . . . ." (*Id.* at p. 153.) However, where an arresting agency remains ignorant of an outstanding warrant, the defendant has not been subject to a hold in the underlying case. (*Ibid.*)

When Chavez was arrested on August 2, 2007, in connection with the El Monte cases, no warrant for his arrest had been issued because he had yet to violate the terms of

his bail. When he was convicted in the El Monte cases 26 days later, and transferred to the Lancaster state prison, he was in custody solely for the charges arising from the El Monte cases. There is no evidence that court or prison officials knew at the time Chavez was arrested, then convicted and imprisoned in the El Monte cases, that there was a bench warrant for him in the West Covina case. The only evidence that they learned of this after Chavez began serving his sentence in the El Monte cases came from Mora's second declaration. However, for the same reasons set forth above, we presume the trial court disregarded Mora's declaration. As a result, there was no evidence Chavez was ever held in the underlying case.

Ultimately, Lexington's appeal falters because it did not follow the statutory procedures available for relief once it learned Chavez had been jailed in an unrelated matter. According to Mora, she learned on September 26, 2007, that Chavez was in the Lancaster state prison. That was just 37 days into the 180-day period provided by section 1305, subdivision (b). Under section 1305, subdivision (e)(1), Lexington could have, and should have, filed a formal motion in the West Covina case to toll the 180-day period on the ground that Chavez was temporarily disabled due to his detention by civil authorities. Under section 1305.4, Lexington could have, and should have, moved to extend the statutory period by up to another 180 days based on the same facts. (See *People v. Lexington Nat. Ins. Co.*, *supra*, 158 Cal.App.4th at p. 375 [motion under section 1305.4 requires low threshold of proof of good cause for extension of 180-day period].)

DISPOSITION

The order denying Lexington's motion to set aside the summary judgment and vacate the forfeiture of its bond is affirmed. Respondent shall recover its appellate costs.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J. GRIMES, J.